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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,011	02/22/2002	Clifford H. Patridge	47097-0110USPT	1903
30223	7590	11/25/2003		
JENKENS & GILCHRIST, P.C. 225 WEST WASHINGTON SUITE 2600 CHICAGO, IL 60606			EXAMINER PASCUA, JES F	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,011

Applicant(s)

PATRIDGE ET AL.

Examiner

Jes F. Pascua

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3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 16-29, 33-35 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-15, 30-32, 36-43, 45 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 6, 10, 12, 13, 30, 31, 32, 36, 40, 42, 43, 45 and 46 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vilutis.

As a note, the bottom, unsealed mouth 24 extends from side edge 18 to side edge 19. Therefore, the unsealed mouth 24 of Vilutis meets the limitation "a bottom bridging the opposing sides".

3. Claims 1, 2, 6, 7, 8, 10, 11, 12, 13, 30, 31, 32, 36, 37, 38, 40, 41, 42, 43, 45 and 46 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Van Erden et al.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 6, 8, 30 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan.

Wan discloses the claimed invention except for a trash can or container in combination with the garbage bag. It would have been an obvious matter of design choice to provide the garbage bag of Wan with a trash can or container, since applicant has not disclosed that combining a trash can or container with a garbage bag solves any stated problem or is for any particular purpose and it appears that the Wan invention would perform equally well in combination with a trash can or container.

6. Claims 9 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vilutis, Van Erden et al., LaFleur or Wan.

Vilutis, Van Erden et al., LaFleur and Wan each disclose the claimed invention except for the narrowing seal being formed by heat sealing the first and second panels instead of adhering the first and second panels. It would have been obvious to one having ordinary skill in the art at the time the invention was made to forming the narrowing seals of Vilutis, Van Erden et al., LaFleur or Wan by adhering the first and second panels since the Examiner takes Official Notice of the equivalence of adhesive seals and heat seals for their use in the bag art and the selection of any of these known equivalents to form the narrowing seals of Vilutis, Van Erden et al., LaFleur or Wan would be within the level of ordinary skill in the art.

7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaFleur or Wan.

LaFleur and Wan each disclose the claimed invention except for the first width being about 24 inches and the second width being about 21 inches. It would have been

an obvious matter of design choice to make the first width of LaFleur or Wan about 24 inches and to make the second width of LaFleur or Wan about 21 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Response to Arguments

8. Applicant's arguments filed 10/17/03 have been fully considered but they are not persuasive.

The container 12 of Vilutis meets the structure of applicant's "trash can" to the same degree as claimed. Therefore, the container of Vilutis is inherently capable of performing as a trash can.

Regarding applicant's argument that Vilutis does not show the bag comprising first and second panels and at least one narrowing seal extending inwardly and downwardly, applicant's attention is directed to Figs. 4 and 5 of Vilutis which clearly show the configuration of the narrowing seal as set forth in applicant's claims 1, 30, 31 and 45.

Regarding the Van Erden et al. reference. Applicant argues that Van Erden et al. does not show narrowing seals that extend inwardly and downwardly from the bag sides or initially extend from the bag sides, then extend downwardly before extending back to the bag sides. Applicant's attention is directed to the spot seals 24, 37, 37', 43 and 43' in all the embodiments of Van Erden et al. The arcuate configuration of these spot

seals certainly meet the limitation of narrowing seals that extend inwardly and downwardly from the bag sides or initially extend from the bag sides, then extend downwardly before extending back to the bag sides.

Applicant's arguments regarding the Billman et al. reference have been considered, but are moot since that rejection has been withdrawn in the present Office action.

Regarding applicant's argument that the first and second panels of LaFleur are not joined together along a pair of opposing sides, applicant's attention is directed to the embodiment of LaFleur shown in Figs. 10-17. In this embodiment, there are no intervening gusset panels connecting the opposing sides of the first and second panels. Instead, the opposing sides of the first and second panels are directly joined to each other.

Applicant's arguments regarding the Wan reference have been considered, but deemed moot in light of the new grounds of rejection in paragraph 5.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.



Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP
November 24, 2003